

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

TODD BARTLEY and MICHELLE	:	
BARTLEY, husband and wife, JOHN	:	
DOE and JANE DOE, and COLONIAL	:	
RADIO GROUP OF WILLIAMSPORT,	:	
LLC,	:	
	:	
Plaintiffs,	:	No. CV 23-01,364
	:	
vs.	:	CIVIL ACTION – LAW
	:	
JAMES A. WEBB, JR., WEBB	:	
WEEKLY, and DARRICK DIXON,	:	
Defendants.	:	

OPINION AND ORDER

AND NOW, this 14th day of October, 2025, upon consideration of preliminary objections to Plaintiffs' Fourth Amended Complaint of Defendants James A. Webb, Jr. and Morgan Air, Inc., d/b/a Webb Weekly (the "Webb Preliminary Objections"),¹ the preliminary objections of Defendant Darrick Dixon (the "Dixon Preliminary Objections"),² the Plaintiffs' response to the Webb Preliminary Objections (the "Response to Webb"),³ and the arguments of the parties,⁴ it is hereby ORDERED and DIRECTED that the Webb Preliminary Objections are SUSTAINED in part and OVERRULED in part, and the Dixon Preliminary Objections, likewise, are SUSTAINED in part and OVERRULED in part, for reasons explained below.

¹ Defendants James A. Webb, Jr.'s and Morgan Air, Inc., d/b/a Webb Weekly's "Preliminary Objections to Plaintiffs' Fourth Amended Complaint," filed May 8, 2025. Defendants Webb and Morgan Air are sometimes collectively referred to in this Opinion as the "Webb Defendants."

² Defendant Darrick Dixon's "Preliminary Objections to Plaintiffs' Fourth Amended Complaint," filed June 3, 2025.

³ "Plaintiffs' Reply to Defendant James A. Webb, Jr., Morgan Air, Inc. d/b/a Webb Weekly's Preliminary Objections to Plaintiffs' Fourth Amended Complaint," filed May 28, 2025.

⁴ The Court heard argument on the Preliminary Objections on June 6, 2025. Application for Continuance and Order dated and entered May 29, 2025; Scheduling Order dated June 5 and entered June 6, 2025. Attorney David F. Wilk, Esq. argued for the Webb Defendants, and attorney Christian A. Lovecchio, Esq. argued for Defendant Dixon. Attorney Gregory A. Stapp, Esq. argued for the Plaintiffs.

I. BACKGROUND.

Plaintiffs Todd and Michelle Bartley, John and Jane Doe, and Colonial Radio Group, LLC commenced this action by Writ of Summons on December 8, 2023 against Defendants James A. Webb, Jr., Webb Weekly and Darrick Dixon.⁵ Plaintiffs thereafter filed their Complaint on June 13, 2024.⁶

Subsequent to preliminary objections and extensive pretrial litigation,⁷ Plaintiffs filed their Fourth Amended Complaint, which is now the operative complaint, on April 22, 2025.⁸ There, Plaintiff Todd Bartley alleges that he is the managing member and operator of Plaintiff Colonial Radio Group and “an investigative reporter/blogger.” In the Summer of 2018, Todd Bartley began reporting on allegations of misconduct, including sexual assault, involving a trip to Myrtle Beach by the Williamsport High School Baseball Team (the “Underlying Incident”). He began to publish articles concerning the trip and how the resulting investigation of the misconduct was handled by the Williamsport Area School District (“WASD”) and Lycoming County (the “County”).⁹

Thereafter, Plaintiffs claim that they began to receive threats and harassment of various types as a result of Plaintiff Todd Bartley’s reporting. Among other things, Plaintiffs claim that the Webb Defendants attempted to interfere with Plaintiff Colonial Radio Group’s advertisers and that Defendant Dixon made various threats

⁵ “Praecipe to Issue Writ of Summons,” filed December 8, 2023; “Writ[s] of Summons,” issued December 8, 2023. See also Pa. R. Civ. P. 1007 (“An action may be commenced by filing with the prothonotary ... a *praecipe* for a writ of summons”).

⁶ “Complaint,” filed June 13, 2024.

⁷ For brevity, the Court does not recount here the extensive pre-trial litigation engaged in by the parties. A comprehensive history of this litigation is contained in the docket and in the Opinions and Orders entered by the Court on September 27 and December 26, 2024 and on April 3, 2025.

⁸ “Fourth Amended Complaint,” filed April 22, 2025 (the “Complaint”).

⁹ *Id.*, ¶¶ 9-10.

to Plaintiffs.¹⁰ They also claim that, during the relevant period, Dixon was an employee, servant or agent of and acting on behalf of the Webb Defendants.¹¹

The Complaint asserts five causes of action: tortious interference with contractual relations (Count I, Plaintiffs v. All Defendants),¹² tortious interference with a prospective contractual relationship (Count II, Plaintiffs v. All Defendants),¹³ vicarious liability (Count III, Plaintiffs v. Defendants Webb and Morgan Air),¹⁴ negligent infliction of emotional distress (Count IV, Plaintiffs v. Defendant Dixon),¹⁵ and intentional infliction of emotional distress (Count V, Plaintiffs v. Defendant Dixon).¹⁶ Plaintiffs seek compensatory damages in the form of lost earnings from future and prospective advertisers and compensation for emotional distress, punitive damages, and attorney's fees and costs.¹⁷

The Webb Defendants and Dixon filed preliminary objections to the Complaint on May 8 and June 3, 2025, respectively.¹⁸ Plaintiffs filed a Response to the Webb Preliminary Objections on May 28, 2025,¹⁹ and the Court heard argument on June 6, 2025.²⁰ Accordingly, the Preliminary Objections are now ripe for resolution.

II. LAW AND ANALYSIS.

A. The Preliminary Objections and Plaintiffs' Response.

The Webb Defendants assert two preliminary objections: (1) insufficient specificity of the Complaint;²¹ and (2) demurrers to Counts I-III.²² More specifically,

¹⁰ *Id.*, ¶¶ 11-27.

¹¹ *Id.*, ¶¶ 18, 25-26.

¹² *Id.*, ¶¶ 28-39.

¹³ *Id.*, ¶¶ 40-46.

¹⁴ *Id.*, ¶¶ 47-53.

¹⁵ *Id.*, ¶¶ 54-57.

¹⁶ *Id.*, ¶¶ 58-67.

¹⁷ *Id.*, Counts I-V, *ad damnum* clauses.

¹⁸ *See, supra*, nn. 1-2.

¹⁹ *See, supra*, n.3.

²⁰ *See, supra*, n.4.

²¹ Webb Preliminary Objections, ¶¶ 1-12.

²² *Id.*, ¶¶ 13-18.

the Webb Defendants contend that the Complaint is insufficiently specific and does not contain sufficient information to allow them to prepare their defense, in that the damages sought are not set forth with precision; in that the advertisers with whom Defendants allegedly interfered are not named; in that the relationship between the Webb Defendants and Dixon is not specified; and in that the communications with advertisers and prospective advertisers are not detailed.²³ They further allege that no facts are pleaded to establish the existence of any contracts with advertisers; that the Complaint does not sufficiently name advertisers and whether they are existing or prospective; that no facts are pleaded concerning contact between Defendants or any existing or prospective advertiser; that a conspiracy is alleged without naming the conspirators, their roles in the conspiracy or any step taken in furtherance of the conspiracy; that damages are not substantiated; that special damages are not pleaded with specificity; that no facts are pleaded to substantiate damages; and that insufficient facts are alleged to substantiate a relationship between the Webb Defendants and Dixon, which relationship the Defendants deny.²⁴

The Dixon Preliminary Objections raise substantially the same issues and concerns as the Webb Preliminary Objections.²⁵

In response to the various preliminary objections, Plaintiffs allege that they filed their Complaint after direction issued by Judge Carlucci at a hearing held March 28, 2025; that they conformed their Complaint to Judge Carlucci's direction; and that Judge Carlucci indicated that no more objections or complaints were appropriate and that this matter should "move to discovery."²⁶ While denying that the Complaint

²³ *Id.*, ¶¶ 1-12.

²⁴ *Id.*, ¶¶ 13-18.

²⁵ Dixon Preliminary Objections.

²⁶ Response.

is in any way unclear, Plaintiffs concede that only "some" of the advertisers or prospective advertisers at issue are named in the Complaint; and that "at least three" of the individuals with whom Defendant Webb allegedly spoke concerning business with Plaintiffs are identified in the Complaint.²⁷

B. Whether the Complaint is insufficiently specific.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for insufficient specificity in a pleading.²⁸ Rule 1019(a), Pennsylvania Rules of Civil Procedure, provides that "[t]he material facts on which a cause of action or defense is based shall be stated in a concise and summary form."²⁹ " 'Material facts' are 'ultimate facts,' i.e., those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged."³⁰ While "the line between pleading facts and evidence is not always bright[.]" two conditions "must always be met: [t]he pleadings must adequately explain the nature of the claim to the opposing party so as to permit him to prepare a defense and they must be sufficient to convince the court that the averments are not merely subterfuge."³¹

When determining whether a claim has been pleaded with the requisite specificity, a court does not analyze the specificity of a particular paragraph or

²⁷ *Id.*, ¶ 8, 11.

²⁸ Pa. R. Civ. P. 1028(a)(3).

²⁹ Pa. R. Civ. P. 1019(a).

³⁰ *Baker v. Rangos*, 324 A.2d 498, 505 (Pa. Super. 1974) (citing *United Refrigerator Co. v. Applebaum*, 189 A.2d 253 (Pa. 1963) (allegation of defense by accommodation parties that plaintiff was accommodated party to whom they were not liable sufficient; reason for accommodation evidentiary fact that need not be alleged); *Smith v. Allegheny County*, 155 A.2d 615 (Pa. 1959) (complaint accusing defendants of failure to provide adequate drainage sufficient; source and means of flow either through pipes or strata of rock a matter of evidence)). Although parties must plead the material facts upon which their claims are based, they need not plead the evidence upon which they will rely to establish those facts. *Com. by Shapiro v. Golden Gate National Senior Care LLC*, 194 A.3d 1010, 1029-30 (Pa. 2018) (citing *United Refrigerator*, *supra*, 189 A.2d at 255; *Unified Sportsmen of Pa. v. Pa. Game Comm'n*, 950 A.2d 1120, 1134 (Pa. Commw. 2008)). "[T]he complaint need not cite evidence but only those facts necessary for the defendant to prepare a defense." *Unified Sportsmen*, *supra*, 950 A.2d at 1134.

³¹ *Bata v. Cent.-Penn Nat. Bank of Philadelphia*, 224 A.2d 174, 179 (Pa. 1966).

allegation; rather, it views the allegations in the context of the pleading as a whole.³² Further, in *Connor v. Allegheny General Hospital*, our Supreme Court held that a proposed amendment to a complaint in trespass and assumpsit arising out of alleged medical malpractice was not barred by the statute of limitations where the amendment did not add new allegations of negligence based on a different theory but merely amplified an existing allegation of the original complaint, because the right to amend a pleading should be granted liberally at any stage in the proceeding, absent "resulting prejudice" to the adverse party.³³ Thus, an amendment amplifying what has already been averred must be permitted, while an amendment introducing a new cause of action after the statute of limitations has run constitutes "resulting prejudice" to the adverse party and must not be allowed.³⁴

When a pleading fails to satisfy the necessary requirements, the adverse party may move to strike the pleading³⁵ or move for a more specific pleading.³⁶ Such motions may be granted when the pleading fails to conform to law or rule of court or when it is otherwise so insufficient that the adverse party cannot understand the claims it sets forth.³⁷ When presented with a motion to strike or a motion for a more specific pleading, the court may exercise "broad discretion in determining the amount of detail that must be averred."³⁸

³² *Yacoub v. Lehigh Valley Med. Assocs., P.C.*, 805 A.2d 579, 589 (Pa. Super. 2002) (en banc). A complaint must do more than merely "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." ... It should formulate the issues by fully summarizing the material facts." *Baker, supra*, 324 A.2d at 505 (quoting *Conley v. Gibson*, 78 S. Ct. 99, 103, (1957) (statement made in reference to Fed. R. Civ. P. 8(a)).

³³ *Connor v. Allegheny General Hospital*, 461 A.2d 600, 602 (Pa. 1983).

³⁴ *Id.* (citing *Schaffer v. Larzelere*, 189 A.2d 267, 270 (Pa. 1963)).

³⁵ Pa. R. Civ. P. 1028(a)(2) ("Preliminary objections may be filed by any party to any pleading ... [for] failure of a pleading to conform to law or rule of court").

³⁶ Pa. R. Civ. P. 1028(a)(3) ("Preliminary objections may be filed by any party to any pleading ... [for] insufficient specificity in a pleading").

³⁷ *Connor, supra*, 461 A.2d at 602-03.

³⁸ *United Refrigerator, supra*, 189 A.2d at 255.

1. Plaintiffs' alleged damages.

Defendants first contend Plaintiffs damages are not stated with sufficient specificity. Defendants' damages consist, *inter alia*, of lost earnings from existing contracts and potential lost earnings from future, prospective contracts. Defendants assert it cannot be determined from the face of the Complaint what those damages are, because Plaintiff has not alleged what contracts were interfered with, their effective dates, their value, or the value of potential future losses.³⁹ Plaintiffs deny the supposed lack of specificity, contend they amended in accordance with Judge Carlucci's instructions, and assert the matter should proceed to discovery.⁴⁰

Rule 1019(f), Pennsylvania Rules of Civil Procedure, provides that "[a]verments of time, place and items of special damage shall be specifically stated."⁴¹ " 'Special damages' are damages that 'are the actual, but not the necessary, result of the injury complained of, and which, in fact, follow it as a natural and proximate consequence in the particular case, that is, by reason of special circumstances or conditions.' "⁴² As our Supreme Court has explained:

Damages are either general, those which are the usual and ordinary consequences of the wrong done, or special, those which are not the usual and ordinary consequences of the wrong done, but which depend upon special circumstances. General damages may be proved without being specially pleaded, the averment of the facts showing the wrong done being sufficient to entitle plaintiff to establish them. Special damages, on the other hand, may not be proved unless the special facts giving rise to them are averred. Furthermore, it is perfectly proper for a plaintiff to prove general damages, where the averments of the statement are sufficient to support them, even though he has, as here, pleaded and attempted to prove special damages. Under no circumstances could such be considered a variance between the pleadings and the proof, and there has been no intimation of surprise on the part of defendants. The damages, proof of which was

³⁹ Webb Preliminary Objections, ¶¶ 2-5; Dixon Preliminary Objections, ¶¶ 2-5.

⁴⁰ Response to Webb, ¶¶ 2-5.

⁴¹ Pa. R. Civ. P. 1019(f).

⁴² *Morin v. Brassington*, 871 A.2d 844, 848-49 (Pa. Super. 2005) (quoting *Aerospace Fin. Leasing v. New Hampshire Ins. Co.*, 696 A.2d 810, 812 n. 5 (Pa. Super. 1997) (citation omitted)).

here objected to because they were not pleaded, were general damages. By section 69 of the Sales Act of May 19, 1915, P.L. 543, it is provided that in the case of breach of warranty of quality, the buyer's loss, in the absence of special circumstances showing proximate damage of greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. It is apparent, therefore, that in a case such as this, where the injury complained of is that the goods delivered were not as warranted, the general, or usual and ordinary, damages are measured by the difference between the value of the goods delivered and the value they would have had if they had been as warranted. This is exactly what was proved. The statement of claim set out in full the contract, the warranty, and the breach of warranty, and was clearly sufficient to permit proof of general damages. Since the damages were general, it was unnecessary to plead them specially.⁴³

Thus, Pennsylvania's pleading rules pertaining to damages focus on notice to the adverse party. Any damages a party is permitted to prove must follow directly from the facts alleged in the pleadings and may not work a surprise on the adverse party. Here, Plaintiffs have alleged interference with existing and prospective contractual relations and intentional and negligent infliction of emotional distress.

a. Interference with contractual relations.

With respect to interference with existing contractual relations, the Complaint states, *inter alia*,

32. Plaintiffs believe and therefore aver, that Defendant Webb approached Van Campen, Blaise Alexander Family of Dealerships, and Fairfield Auto Group and discouraged them from continuing to advertise with Colonial Radio Group, LLC because Defendant Webb and Defendant Dixon were upset that Plaintiff Todd Bartley (sole shareholder of Plaintiff Colonial Radio Group, LLC), was continuing to report, publish and to pursue his investigation related to the Williamsport High School Baseball team and the Williamsport Area School District's handling of the 2018 Myrtle Beach incident.

...

35. Plaintiff Colonial Radio Group, LLC had existing contractual relationships with the parties named in paragraph 32.... Plaintiffs believe, and therefore aver, that Defendant Webb intended to harm the

⁴³ *Parsons Trading Co. v. Dohan*, 167 A. 310, 312 (Pa. 1933) (citations omitted).

Plaintiffs Todd Bartley and Colonial Radio Group, LLC by interfering with the contractual relationships with the parties listed in paragraph 32 with the absence of or justification on his part.

...

38. Due to the Defendants' behavior, Plaintiffs Todd Bartley and Colonial Radio Group of Williamsport, LLC has lost reputation in its industry and may continue to lose reputation in its industry. Plaintiffs believe and therefore aver that Plaintiffs have lost business and/or customers as a result of the Defendant's behavior resulting in pecuniary loss and may lose prospective customers in the future causing additional pecuniary loss.⁴⁴

With respect to interference with prospective contractual relations, the Complaint states, *inter alia*,

42. The Defendants actions as identified above interfered with prospective advertisers of Colonial Radio Group, LLC in that Defendants approached business owners and discouraged them from purchasing advertising with Colonial Radio Group, LLC because Defendants were upset over the reporting and investigation being conducted by Plaintiff Todd Bartley related to the Williamsport High School Baseball team and the Williamsport Area School District's handling of the 2018 Myrtle Beach incident.

43. Plaintiffs believe, and therefore aver, that potential advertisers were approached and influenced by the Defendants not to advertise with Plaintiff Colonial Radio Group of Williamsport, LLC.

...

46. Due to the Defendants' behavior, Plaintiffs Todd Bartley and Colonial Radio Group of Williamsport, LLC ha[ve] lost reputation in [their] industry and may continue to lose reputation in [their] industry. Plaintiffs believe and therefore aver that Plaintiffs have lost business and/or customers as a result of the Defendant's behavior resulting in pecuniary loss and may lose prospective customers in the future causing additional pecuniary loss.⁴⁵

The ordinary measure of damages for interference with existing or prospective contractual relations is

(a) the pecuniary loss of the benefits of the contract or the prospective relation;

⁴⁴ Complaint, ¶¶ 32, 35, 38.

⁴⁵ *Id.*, ¶¶ 42-43, 46.

(b) consequential losses for which the interference is a legal cause;
and

(c) emotional distress or actual harm to reputation, if they are
reasonably to be expected to result from the interference....⁴⁶

Plaintiffs have identified three contractual relationships with which Defendants allegedly interfered. Plaintiffs claim existing contractual relationships with three businesses, but their allegations do not comply with our rules of pleading in that Plaintiffs fail to state the material facts upon which their cause of action is based,⁴⁷ have failed to state averments of time and place with specificity,⁴⁸ have not stated specifically whether the agreements are oral or written,⁴⁹ and have not attached copies of any written agreements or accounted for their inability to do so.⁵⁰ Plaintiffs have not alleged any prospective contractual relationships with which Defendants allegedly interfered and, so, have not alleged the material facts in support of their cause of action for interference with prospective contractual relations. As Plaintiffs have not properly pleaded their claims for interference with contractual relations or interference with prospective contractual relations, they cannot recover damages under either cause of action.

Furthermore, to the extent damages are recoverable, any consequential damages are special damages⁵¹ that must be pleaded specifically.⁵² As Plaintiffs did not plead any consequential damages specifically, they are not entitled to recover consequential damages. Harm to reputation typically is a category of

⁴⁶ *Pelagatti v. Cohen*, 536 A.2d 1337, 1343 (Pa. Super. 1987) (quoting Restatement (Second) of Torts, § 774A(1)).

⁴⁷ Pa. R. Civ. P. 1019(a).

⁴⁸ Pa. R. Civ. P. 1019(f).

⁴⁹ Pa. R. Civ. P. 1019(h).

⁵⁰ Pa. R. Civ. P. 1019(i).

⁵¹ See, e.g., *ChildFirst Services, Inc. v. Department of Human Services*, 277 A.3d 622, 632 n. 12 (Pa. Commw. 2022).

⁵² Pa. R. Civ. P. 1019(f).

general damages,⁵³ but Plaintiffs have not pleaded any material facts to support damage to their reputation.

Accordingly, Defendants preliminary objections alleging the Complaint is insufficiently specific concerning Plaintiffs' claims for damages for interference with existing (Count I) and prospective (Count II) contractual relations are SUSTAINED. Plaintiffs claims for damages due to loss of existing and prospective contractual relations (Counts I and II) are STRICKEN, without leave to amend.⁵⁴ The claims for damages having been stricken, Plaintiffs will be unable to prove a necessary element of their claims—*i.e.*, “the occasioning of actual legal damage as a result of the defendant's conduct.”⁵⁵ Accordingly, Counts I and II of the Complaint are STRICKEN in their entirety, without leave to amend.

b. Emotional distress.

With respect to the claims for negligent and intentional emotional distress, Plaintiffs have alleged, *inter alia*, that Defendant Dixon committed “multiple acts of extreme and outrageous conduct which caused severe emotional, psychological and psychiatric injuries, distress, and harm to Plaintiffs...”⁵⁶ and “intentionally committed multiple acts of extreme and outrageous conduct which caused severe emotional,

⁵³ See, e.g., *Joseph v. Scranton Times L.P.*, 959 A.2d 322, 344 (Pa. Super. 2008).

⁵⁴ “[I]t is generally an abuse of discretion to dismiss a complaint without leave to amend.” *Harley Davidson Motor Co., Inc. v. Hartman*, 442 A.2d 284, 286 (Pa. Super. 1982). “There may, of course, be cases where it is clear that amendment is impossible and where to extend leave to amend would be futile.... [However], [t]he right to amend should not be withheld where there is some reasonable possibility that amendment can be accomplished successfully.” *Otto v. American Mutual Ins. Co.*, 393 A.2d 450, 451 (Pa. 1978). Plaintiffs will not be permitted to amend here, as the Court finds there is no reasonable possibility that amendment can be accomplished successfully. The operative Complaint here is Plaintiffs' Fourth Amended Complaint, and, after four attempts to amend, Plaintiffs have not been able to allege facts in support of their claims. Accordingly, the Court concludes they cannot do so at the present time. Plaintiffs may file an appropriate motion to amend their Complaint pursuant to Pa. R. Civ. P. 1033 should facts later emerge to support their contentions. Any such request for amendment will be evaluated according to prevailing law, including whether such amendment would cause “resulting prejudice” to the opposing parties. See, *Connor, supra*.

⁵⁵ See, *infra*, Part II.C.1.

⁵⁶ Complaint, ¶ 57.

psychological, and psychiatric injuries, distress, and harm to plaintiffs....⁵⁷ By means of their vicarious liability claim, Plaintiffs seek to hold the Webb Defendants responsible for the alleged tortious acts of Defendant Dixon.⁵⁸

The ordinary measure of damages for negligent or intentional infliction of emotional distress is compensation for the plaintiff's mental distress and emotional suffering.⁵⁹ Plaintiffs seek general damages for their claims for negligent and intentional emotional distress.⁶⁰ Plaintiff has alleged sufficient material facts in support of these claims.

Accordingly, Defendants preliminary objections alleging the Complaint is insufficiently specific concerning Plaintiffs' claims for damages for negligent (Count IV) and intentional (Count V) emotional distress are OVERRULED.

2. Affected advertisers and prospective advertisers.

Defendants contend Plaintiffs do not elaborate which specific advertisers Defendants allegedly contacted, beyond three auto dealers, what slanderous or detrimental statements were made, absent generalized allegations, and among whom such statements were made.⁶¹ Again, Plaintiffs deny the supposed lack of specificity, contend they amended in accordance with Judge Carlucci's instructions, and assert the matter should proceed to discovery. More specifically, Plaintiffs assert, "it is specifically denied that Plaintiffs' Fourth Amended Complaint is not specific. The Plaintiffs intend[] to perform discovery at which time Plaintiffs will determine the actual statements made to the advertisers and the potential advertisers." They also admit that only three advertisers were named and assert

⁵⁷ *Id.*, ¶ 67.

⁵⁸ *Id.*, Count III.

⁵⁹ *Reist v. Manwiller*, 332 A.2d 518, 524 n.4 (Pa. Super. 1974).

⁶⁰ Complaint, Counts IV & V, *ad damnum* clauses.

⁶¹ Webb Preliminary Objections, ¶¶ 7-9, 11; Dixon Preliminary Objections, ¶¶ 7-9, 11.

they were individuals with whom the Webb Defendants communicated, and imply others may be added after discovery.⁶²

In an Opinion and Order previously issued in response to preliminary objections in this case, the Court stated:

Thus, to pursue their claims for interference with contractual relations and interference with prospective contractual relations, Plaintiffs must have specific contractual relations or prospective contractual relations with specific advertisers and potential advertisers and Defendants must have wrongfully taken specific action(s) to harm the existing relationship or to prevent the prospective relationship from occurring, all of which resulted in actual legal harm to the Plaintiffs. The requirement that a plaintiff plead the material facts upon which a cause of action or defense is based necessarily means that a pleader must plead the material facts supporting each element of each cause of action asserted.

In other words, our rules of pleading require the [Plaintiffs] to state the material facts in support of each element of the causes of action [they] allege[]. At a minimum, [Plaintiffs] must state which advertisers Defendants allegedly contacted, how Defendants allegedly improperly interfered with existing or prospective contractual relations and the actual damages sustained as a result. Furthermore, as each contractual relationship or prospective contractual relationship Defendants allegedly interfered with to the detriment of Plaintiffs constitutes a separate claim against the Defendants, Defendants would be severely prejudiced should [P]laintiff[s] not "name names," as Plaintiffs likely would be able to add additional causes of action without restriction, even after expiration of the statute of limitations....⁶³

With respect to the allegations that Defendants interfered with Plaintiffs' contractual relationships, Plaintiffs named three businesses with which they had existing contractual relationships and no advertisers with which they had prospective contractual relationships. As noted above, Plaintiffs did not properly plead the material facts in support of their claims of interference with contractual relationships and did not properly plead material facts concerning their contractual relationships.⁶⁴

⁶² Response to Webb, ¶¶ 2-5.

⁶³ Opinion and Order dated and entered December 26, 2024, Part III.B., at 10.

⁶⁴ See, *supra*, Part II.B.1.a.

Accordingly, Defendants' preliminary objections alleging the Complaint is insufficiently specific concerning Plaintiffs' claims for interference with existing (Count I) and prospective (Count II) contractual relations are SUSTAINED. The Court has stricken Counts I and II for Plaintiff's inability to prove damages.⁶⁵ In addition to that, Plaintiffs' claims for interference with existing and prospective contractual relations (Counts I and II) are STRICKEN, without leave to amend,⁶⁶ for insufficient specificity and failure of the Complaint to conform to law or rule of court.

3. *The relationship between the Webb Defendants and Dixon.*

Defendants contend Plaintiffs have not provided any specific information concerning the alleged relationship between the Webb Defendants and Dixon, beyond generalized allegations, while Defendants deny there is any such relationship.⁶⁷ Again, Plaintiffs deny the supposed lack of specificity, contend they amended in accordance with Judge Carlucci's instructions, and assert the matter should proceed to discovery. More specifically, Plaintiffs assert that they "have provided the Affidavit from the Defendants themselves in which they admit that Defendant Dixon was an agent, servant or employee of Defendant Webb during the relevant time period of this case."⁶⁸

Among other allegations, the Complaint alleges the following concerning the relationship between the Defendants:

18. At all times relevant hereto, Darrick Dixon was an employee, servant or agent of James A. Webb, Jr. at his business Morgan Air, Inc. d/b/a Webb Weekly.

...

⁶⁵ See, *supra*, Part II.B.1.a.

⁶⁶ See, *supra*, n. 54.

⁶⁷ Webb Preliminary Objections, ¶ 10; Dixon Preliminary Objections, ¶ 10.

⁶⁸ Response to Webb, ¶ 10.

25. At all times relevant hereto, Darrick Dixon was an employee, servant or agent of James A. Webb, Jr. at his business Morgan Air, Inc. d/b/a Webb Weekly.

26. Plaintiffs believe, and therefore aver, that Defendant Darrick Dixon was not acting alone when he sent the threatening messages and engaged in intimidating and threatening activities directed at Plaintiff Todd Bartley. Plaintiff believes, and therefore avers, that Defendant Dixon was working with other individuals which may include the Defendant James A. Webb and/or Morgan Air, Inc. d/b/a Webb Weekly.

...

48. Darrick Dixon was an agent, servant or employee of Defendant James A. Webb and/or Morgan Air, Inc. d/b/a Webb Weekly who are vicariously liable for the actions of their agents, servants or employees.

49. Defendant Darrick Dixon was an apparent agent of Defendant James A. Webb and/or Morgan Air, Inc. d/b/a Webb Weekly, which through their actions and conduct or failure to act, held out Defendant Darrick Dixon as their agent, servant or employee.

50. On information and belief, at all times relevant hereto, Defendant Darrick Dixon was acting within the scope of his employment as agent, servant, or employee of Defendant James A. Webb, Jr. and Morgan Air, Inc. d/b/a Webb Weekly.

51. James A. Webb, Jr. and Morgan Air, Inc. d/b/a Webb Weekly held themselves out as employers of Hoopers Only TV and/or other businesses owned and operated by Defendant Darrick Dixon on multiple social media sites....

52. Defendant James A. Webb, Jr. and Morgan Air, Inc. d/b/a Webb Weekly are vicariously liable for the commissions and omissions of Defendant Darrick Dixon, who is an agent, servant, or employee of theirs or who is apparently held out as such.⁶⁹

The Complaint alleges Defendant Dixon is an agent, servant or employee or the Webb Defendants. Defendants have denied such a relationship exists. The relationship, if any, between Dixon and the Webb Defendants is an issue of fact.

⁶⁹ Complaint, ¶¶ 18, 25-26, 48-52.

Plaintiffs have alleged this fact with sufficient specificity to enable Defendants to prepare a defense.

Further, because the relationship is an issue of fact, it cannot be resolved on preliminary objections. With respect to this issue, Defendants' Preliminary Objections are impermissible "speaking demurrers." "A demurrer is a preliminary objection that the pleadings fail to set forth a cause of action upon which relief can be granted under any theory of law."⁷⁰ In contrast,

[a] "speaking demurrer" is defined as "one which, in order to sustain itself, requires the aid of a fact not appearing on the face of the pleading objected to, or, in other words, which alleges or assumes the existence of a fact not already pleaded, and which constitutes the ground of objection and is condemned both by the common law and the code system of pleading." A "speaking demurrer" cannot be considered in sustaining a preliminary objection.⁷¹

For purposes of considering a demurrer, all facts alleged in the Complaint and any inferences reasonably deductible from them must be taken as true, and the Court may not consider any extrinsic testimony or other evidence.⁷² Accordingly, because the Court cannot say that "on the facts averred, the law says with certainty that no recovery is possible,"⁷³ Defendants' Preliminary Objections concerning the relationship between Dixon and the Webb Defendants are OVERRULED.⁷⁴

⁷⁰ *McNeil v. Jordan*, 814 A.2d 234, 238 (Pa. Super. 2002).

⁷¹ *Regal Indus. Corp. v. Crum and Forster, Inc.*, 890 A.2d 395, 398 (Pa. Super. 2005) (citing Black's Law Dictionary 299 (6th ed. 1991)).

⁷² *Weiley v. Albert Einstein Medical Center*, 51 A.3d 202, 208 (Pa. Super. 2012).

⁷³ *Vattimo v. Lower Bucks Hospital, Inc.*, 465 A.2d 1231, 1232 (Pa. 1983).

⁷⁴ Plaintiffs have asserted they have evidence that Defendant Dixon is an agent, servant or employee of the Webb Defendants. Defendants have denied this allegation vigorously and have presented evidence in support of their position. The Court is precluded from considering any evidence at the present time, due to the posture of the case, so it is unable to comment regarding the relative strength of either position. However, the evidence propounded by the Defendants places Plaintiffs on notice that they may lack a factual basis for their assertions regarding the relationship between the parties. Should that ultimately prove to be the case, an award of sanctions pursuant to Pa. R. Civ. P. 1023.4 may be appropriate.

C. Whether the Complaint is legally insufficient.

The Pennsylvania Rules of Civil Procedure permit a preliminary objection for legal insufficiency of a pleading (demurrer).⁷⁵ “ [A] demurrer is a preliminary objection to the legal sufficiency of a pleading and raises questions of law.”⁷⁶

[A] demurrer is properly granted where the contested pleading is legally insufficient.... “Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” ... All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true.⁷⁷

Since a demurrer tests the legal sufficiency of a pleading, it will be granted only when “on the facts averred, the law says with certainty that no recovery is possible.”⁷⁸

1. Legal sufficiency of Plaintiffs’ claim for interference with existing contractual relationships (Count I).

Under Pennsylvania law,

Tortious interference with prospective or existing contractual relations consists of the following elements:

- (1) the existence of a contractual, or prospective contractual relation between the complainant and a third party;
- (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring;
- (3) the absence of privilege or justification on the part of the defendant; and
- (4) the occasioning of actual legal damage as a result of the defendant’s conduct.

⁷⁵ See Pa. R. Civ. P. 1028(a)(4).

⁷⁶ *Matteo v. EOS USA, Inc.*, 292 A.3d 571, 576 (Pa. Super. 2023) (quoting *Laret v. Wilson*, 279 A.3d 56, 58 (Pa. Super. 2022)).

⁷⁷ *Weiley, supra*, 51 A.3d at 208 (quoting *Cardenas v. Schober*, 783 A.2d 317, 321-22 (Pa. Super. 2001) (citing Pa. R. Civ. P. 1028(a)(4))).

⁷⁸ *Vattimo, supra*, 465 A.2d at 1232 (citing *Hoffman v. Misericordia Hospital of Philadelphia*, 267 A.2d 867 (Pa. 1970)).

In determining whether a particular course of conduct is improper for purposes of setting forth a cause of action for intentional interference with contractual relationships, or, for that matter, potential contractual relationships, the court must look to section 767 of the Restatement (Second) of Torts. This section provides the following factors for consideration: 1) the nature of the actor's conduct; 2) the actor's motive; 3) the interests of the other with which the actor's conduct interferes; 4) the interests sought to be advanced by the actor; 5) the proximity or remoteness of the actor's conduct to interference, and 6) the relationship between the parties.⁷⁹

As noted above, the Court previously admonished Plaintiffs that they must plead specific contractual relationships with specific existing or prospective advertisers, specific actions that Defendants allegedly took to interfere with these relationships, and actual damages suffered as a result.⁸⁰ Plaintiffs have not done this.

Accordingly, Defendants' preliminary objections interposing a demurrer to Plaintiffs' claim for interference with existing contractual relations (Count I) are SUSTAINED. The Court has stricken Count I for Plaintiff's inability to prove damages⁸¹ and for insufficient specificity and failure to conform to law or rule of court.⁸² In addition, Plaintiffs' claim for interference with existing contractual relations (Count I) is DISMISSED, without leave to amend,⁸³ as Plaintiffs have failed to plead properly the necessary elements of their cause of action.

2. Legal sufficiency of Plaintiffs' claim for interference with prospective contractual relationships (Count II).

For reasons explained in the preceding Section of this Opinion, Defendants' preliminary objections interposing a demurrer to Plaintiffs' claim for interference with

⁷⁹ *Maverick Steel Co., L.L.C. v. Dick Corporation/Barton Malow*, 54 A.3d 352, 354-55 (Pa. Super. 2012) (quoting *Steffy & Son, Inc. v. Citizens Bank of Pa.*, 7 A.3d 278, 288 (Pa. Super. 2010) (quoting *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. 1997) (citations omitted))).

⁸⁰ See, *supra*, Part II.B.2.

⁸¹ See, *supra*, Part II.B.1.a.

⁸² See, *supra*, Part II.B.2.

⁸³ See, *supra*, n. 54.

prospective contractual relations (Count II) are SUSTAINED. The Court has stricken Count II for Plaintiff's inability to prove damages⁸⁴ and for insufficient specificity and failure to conform to law or rule of court.⁸⁵ In addition, Plaintiffs' claim for interference with prospective contractual relations (Count I) is DISMISSED, without leave to amend,⁸⁶ as Plaintiffs have failed to plead properly the necessary elements of their cause of action.

3. Legal sufficiency of Plaintiffs' claim for vicarious liability.

As indicated above, the Court finds that Plaintiffs have properly pleaded the material facts in support of their claim for vicarious liability (Count III).⁸⁷ While the Defendants vigorously deny Plaintiffs' allegations, their denials cannot be resolved on a demurrer.

Accordingly, Defendants' preliminary objections interposing a demurrer to Plaintiffs' claim for vicarious liability (Count III) are OVERRULED.

III. CONCLUSION AND ORDER.

For the reasons explained above, the Webb Preliminary Objections and the Dixon Preliminary Objections are SUSTAINED in part and OVERRULED in part. The Plaintiffs' claims for damages for interference with existing (Count I) and prospective contractual relationships (Count II) are STRICKEN for Plaintiff's inability to prove damages and, additionally, for insufficient specificity and failure to conform to law or rule of court. Additionally, and alternatively, Counts I and II of the Plaintiffs Fourth Amended Complaint are DISMISSED for Plaintiffs' failure to plead properly the necessary elements of their causes of action. As this is Plaintiffs' fifth attempt to

⁸⁴ See, *supra*, Part II.B.1.a.

⁸⁵ See, *supra*, Part II.B.2.

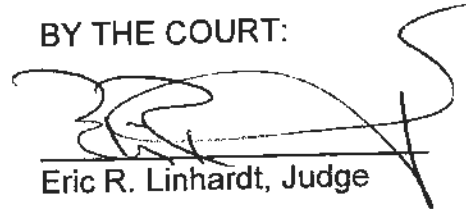
⁸⁶ See, *supra*, n. 54.

⁸⁷ See, *supra*, Part II.B.3.

plead those claims, without avail, Plaintiffs will not be permitted to amend their Complaint as of course.⁸⁸ Defendants shall file an answer to the Fourth Amended Complaint within twenty (20) days after entry of this Order.

IT IS SO ORDERED.

BY THE COURT:



Eric R. Linhardt, Judge

ERL/bel

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⁸⁸ See, *supra*, n. 54.